

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

Case No.	CV 08-04202 CAS (CWx)	Date	October 30, 2008
Title	Mousaler, Inc. v. United States of America		

Present: The Honorable	CHRISTINA A. SNYDER		
Catherine Jeang	Not Present		N/A
Deputy Clerk	Court Reporter / Recorder		Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
Not Present		Not Present	

Proceedings: **(In Chambers): Plaintiff's Request for Stay** (filed 6/25/2008)

On June 25, 2008, plaintiff Mousaler, Inc. filed a complaint for judicial review and determination of the validity of a May 28, 2008 administrative action taken by the United States Department of Agriculture ("USDA"). In the complaint, plaintiff also requests a stay of the administrative action. Plaintiff contends that the government abused its discretion when it disqualified plaintiff for a period of one year from participation as an authorized retailer in the Food Stamp Program. Compl. ¶ 7. Plaintiff contends that the one year disqualification violates 7 CFR § 278.6(e)(5), which states that a firm will be disqualified for six months if "the evidence shows that personnel of the firm have committed violations . . . due to carelessness or poor supervision by the firm's ownership or management."

The government filed an opposition to plaintiff's request for stay on October 3, 2008. The government argues that plaintiff has not demonstrated the requisite likelihood of success on the merits in showing that an abuse of discretion has occurred. The government cites 7 CFR § 278.6(e)(4), which states that a firm will be disqualified for one year if "the ownership or management personnel of the firm have committed violations . . ." The government argues that because plaintiff has admitted a violation – that plaintiff extended credit to customers and accepted food stamp benefits in payment for the credit – and because "logically, a low level employee of the store would not be in a position to issue credit to customers," 7 CFR § 278.6(e)(4) is applicable and, therefore, the one year disqualification was appropriate. Furthermore, the government argues, because "plaintiff does not meet its burden in the complaint and request for stay in establishing that ownership or management did not commit the violations," a stay is not warranted.

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Plaintiff did not file a reply to the government's opposition.

The Court has reviewed the arguments set forth by the parties, and finds that plaintiff has not demonstrated a likelihood of success on the merits in showing that the one year disqualification constituted an abuse of discretion. The Court requests that the government submit formal findings of fact and conclusions of law consistent with this order.

IT IS SO ORDERED

Initials of Preparer

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